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IN THE

Supreme Court of the United States

October Term, 1993

Marcia S. French,

Petitioner.

v.

Ronald L. King, et al.,

Respondents.

On Writ of Certiorari
to The United States Court of Appeals
For the Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Questions Presented

The Respondents disagree with the Petitioner's statement of the questions

presented. The questions presented by this petition are as follows:

1. Whether the District Court allowed sufficient discovery to address the issues raised in the motion for summary judgment?

2. Whether the courts below correctly held that the Respondents were protected by the doctrine of qualified immunity?

3. Whether the courts below correctly held that the Petitioner's post-trial motion under Federal Rule of Civil Procedure 60(b) was meritless?

Table of Contents

	Page(s)
Questions Presented	i, ii
Table of Contents	iii
Table of Authorities	iv
Summary of Argument	1
Statement of Case	3
a. Termination Procedures	6
b. Evidence Offered in Post-Judgment Motions	7
Argument	8
Due Process	9
a. Pre-termination Meeting	10
b. Post-termination Meeting	12
Qualified Immunity	13
Rule 60(b) Motion	16
Conclusion	17

Table of Authorities

Page(s)

Cases

Aliff v. Joy Manufacturing Corp., 914 F. 2d 39, 44 (4th Cir. 1990) . . 16

Anderson v. Creighton, 483 U.S. 635, 641 (1987) 15

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) 9

Buschi v. Kirven, 775 F. 2d 1240 (4th Cir. 1985) 11

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). 10, 12

Crocker v. Fluvanna Cty. Bd. of Public Welfare, 859 F. 2d 14 (4th Cir. 1988). 11, 15

Dennison v. County of Frederick, 921 F. 2d 50 (4th Cir. 1990), cert. denied 111 S. Ct. 2828. 10

Detweiler v. Comm. of Va. Dept. of Rehab. Services, 705 F. 2d 557 (4th Cir. 1983). 12, 13

Harlow v. Fitzgerald, 457 U.S. 800, 816 (1982). 14, 15

Statues

Va. Code § 2.1-114.5:1 7

Summary of Argument

This case presents no issue meriting review by this Court. The case below presented an archetypal discharge case involving a public employee. As relevant to this appeal, the Petitioner contended that her due process rights were violated by the lack of an adequate post-termination hearing.

During the litigation of the case in the District Court, the Petitioner conducted written discovery and took over eight hundred pages of depositions. The record established conclusively that she had taken advantage of the Virginia Grievance Procedure for public employees, which consists of various informal meetings, followed by a quasi-judicial hearing before a three-member panel. The

chairman of the panel is a lawyer appointed from a list maintained by the Supreme Court of Virginia. At this hearing, the employer and employee, both represented by counsel, can present witnesses and documentary evidence on the propriety of the termination.

With these facts clearly established, the lower courts correctly held that the plaintiff's due process rights had been satisfied.

The courts have upheld Virginia's grievance procedure for over a decade. In light of this judicial history, the lower courts also correctly held that the Respondents were protected by qualified immunity because they allowed the Petitioner to take the steps outlined under the grievance procedure.

After the District Court's initial

decision, the Petitioner attempted to reargue the case and added many citations from the discovery in support of her post-judgment motions. She provided no explanation for the delay in her new submissions. Further, her new filings did not even address the facts girding the District Court's decision. Accordingly, the courts below properly held that the post-trial motions afforded no basis for relief.

Statement of Case

In this case, the Petitioner contests her termination from her employment because of misconduct. Although her employer provided her a lengthy hearing before an unbiased grievance panel, and although that panel upheld her termination, she has consistently claimed that her constitutional right to due

process has been violated.

The courts below ruled against the Petitioner on two grounds. First, they held that the Respondents had provided the Petitioner with adequate procedural protection. Second, they held that the Respondents were protected by qualified immunity. The Petitioner, however, has only raised issues challenging the District Court's ruling on qualified immunity.

The Petitioner filed suit in September, 1992. The Respondents filed a motion for summary judgment in October, 1992, accompanied by an affidavit. In November, 1992, the Petitioner began the process of deposing a great many witnesses. She took over eight hundred pages of depositions. She secured hundreds of pages of documents from the

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Respondents.[1]

In December, 1992, the Respondents renewed their motion for summary judgment. On January 15, 1993, the District Court granted the Respondents' motion.

Notwithstanding the voluminous discovery in the case, the Petitioner produced little evidence in response to the Respondents' summary judgment motion. Only after the court's decision did the Petitioner first refer to the depositions she had taken. Her motion to alter, amend, or vacate the judgment, and her motion to reopen the case because of "newly discovered" evidence, quote extensively from the discovery, and run hundreds of pages in length.

Although the record ultimately proved

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[1]Defendants' "Reply to Motion to Alter, Amend, or Vacate Thi
t's Order Granting Summary Judgment," February 2, 1993, p.2.

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lengthy, the pertinent facts are undisputed.

a. Termination Procedures

The Petitioner is a former employee of the Caroline County, Virginia, Board of Social Services. She was terminated for misconduct.

Before her termination, she met with her supervisor and then with the Board of Social Services--the governing body of the Department. The Petitioner spoke to the Board and explained her position. Her supervisor recommended her dismissal, and the Board voted to discharge her. The supervisor met with her two days later and advised her of the decision. App. 32.

The Petitioner then filed a grievance under the Virginia State Grievance procedure. The Respondents followed all the steps in the grievance procedure.

App. 42. The stages consist of meetings with management, followed by a hearing before a panel consisting of a member appointed by the employee, a member appointed by management, and a presiding member appointed by the Director of the Department of Employee Relations Counselors. Va. Code § 2.1-114.5:1. She did not prevail in the grievance procedure.

b. Evidence Offered in Post-Judgment Motions

After the District Court granted the Respondents' motion for summary judgment, the Petitioner unleashed a torrent of pleadings citing deposition excerpts and other documentary evidence. Nearly all this evidence had been available to her all along. She never explained why she withheld it.

Copious as her post-judgment filings were, they added little to her prior documentation. She contended over and over that she did not receive a fair hearing and that she was innocent of any wrong-doing. As the District Court noted, her pleadings rehash her theories "ad nauseam." App. 22.

The only new information in post-trial motions is the disclosure that she lost the grievance procedure. The panel member she selected said by affidavit that he had an "instinctive impression" that the other panelists were somehow unfair. App. 22.

Argument

The case was ripe for summary judgment when the district court ruled. The Respondents had filed two summary judgment motions, supported by affidavits.

The Petitioner had responded with counter-affidavits. Although the parties disagreed over the significance of much of the evidence, they did not dispute material facts that might affect the outcome of the motion. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Due Process

The Petitioner conveniently ignores the rulings of both lowe courts that the Respondents had afforded her "all the process she was due." App. 12. In the petition, she presents questions and arguments relating to the issue of qualified immunity. Thus, this Court could find error in the lower courts' decisions on qualified immunity, and still have to affirm the judgment because of the unchallenged judgment that the Respondents

did no wrong.

And this judgment is clearly correct. The Respondents provided the Petitioner with adequate pre- and post-termination procedural safeguards.

a. Pre-termination Meeting.

The Constitution requires little procedural protection before terminating an employee who has a civil service grievance procedure to pursue later. A chance to meet briefly with supervisors suffices, so that an error can be prevented. Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). This Court has held that a quick review of the events leading to termination will meet the Loudermill test. Dennison v. County of Frederick, 921 F. 2d 50 (4th Cir. 1990), cert. denied 111 S. Ct. 2828. The opportunity to confer, whether or not

taken by the employee, meets the standard. Buschi v. Kirven, 775 F. 2d 1240 (4th Cir. 1985).

If the employee learns the reasons for the proposed action and an opportunity to explain her side, due process has been satisfied. Crocker v. Fluvanna Cty. Bd. of Public Welfare, 859 F. 2d 14 (4th Cir. 1988). The purpose of the meeting is to allow the employee to urge the employer to invoke his discretion and to help prevent mistakes in the termination process. Id.

Here, the Petitioner had sufficient pre-termination procedural safeguards. She had three pre-termination meetings. First, she met her supervisor to review the allegations of wrong-doing. Then, she met with the Board and explained her position again. Finally, she met with the supervisor again on the day of her

termination. Each of these meetings standing alone meets the purpose of Loudermill and its progeny: she told her side of the events in question. That she was unsuccessful in persuading her employer does not create a constitutional violation.

b. Post-termination Proceedings.

By the same token, the state grievance procedure satisfies the need for a hearing after termination. The flexible requirements of due process do not mandate a complete trial-type hearing. Rather, notice and an opportunity to be heard are the essence of the constitutional safeguards, and the courts have held time after time that the state grievance procedure meets those requirements. E.g. Detweiler v. Comm. of Va. Dept. of Rehab. Services, 705 F. 2d 557 (4th Cir. 1983).

Indeed, Detweiler recognizes that the grievance procedure satisfies due process even though it lacks many of the litigation tools, such as compulsory process and judicial review, of a court trial.

The record shows that the Petitioner pursued the grievance procedure through its final step--a quasi-judicial hearing before a three-member panel. Given these facts, her due process claim must fail.

Qualified Immunity

The Petitioner contends that she did not have adequate opportunity to conduct discovery on the issues raised by the Respondents' claim of qualified immunity. She says that there is confusion among the circuits as to proper amount of discovery.

Although the courts have allowed

varying amounts of discovery in order to address qualified immunity motions, this case does not raise any issue that would elucidate whatever confusion may exist about discovery. As noted above, the Petitioner took over eight hundred pages of depositions, and conducted written discovery as well. The issue--whether she received the mandated termination hearings--was adequately explored in those hearings. Even the most ardent advocate of full discovery in qualified immunity cases would be hard pressed to suggest that in this context more discovery is needed. Indeed, the time spent on this case is exactly the sort of burden the qualified immunity defense is supposed to prevent. Harlow v. Fitzgerald, 457 U.S. 800, 816 (1982).

The Petitioner also contends that

this case raises issues about the "clearly established" doctrine in qualified immunity cases. A defendant enjoys such immunity so long as his "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Anderson v. Creighton, 483 U.S. 635, 641 (1987).

Whatever ambiguity may exist about what is a "clearly established" rule of law, it does not apply to this case. The Respondents complied with the unquestionably then-current law--they followed the grievance procedure. Dennison v. County of Frederick, 921 F. 2d 50 (4th Cir. 1990); Crocker v. Fluvanna Cty. Bd. of Public Welfare, 859 F. 2d 14 (4th Cir. 1988). At the time of the

District Court's decision, the Fourth Circuit Court of Appeals had upheld the grievance procedure for nine years. App. 42. No case had held that any aspect of the grievance procedure was unconstitutional. Rather, the cases specifically declare that the grievance procedure satisfies the requirements of due process. Thus, the Respondents were entitled to the defense of qualified immunity: they did not violate any clearly established federal law of which reasonable people in their positions would know.

Rule 60(b) Motion

Whether to grant a motion under Rule 60(b) lies within the trial court's sound discretion. Aliff v. Joy Manufacturing Corp., 914 F. 2d 39, 44 (4th Cir. 1990). Here, the court properly exercised its

discretion, and denied the motion to reopen the case based on newly discovered evidence. The only new evidence the plaintiff offered was an affidavit from her panel member. The panel member said that he had an "instinctive impression" that his fellow panelists were unfair. App. 13-14, 22. She offered no explanation as to why she did not produce the evidence earlier. App. 14. Further, the affidavit did not suggest that the original decision of the court was wrong. The District Court properly exercised its discretion to deny the motion, which amounted to little more than an attempt to relitigate the entire case.

Conclusion

This case does not present a close question, and offers the Court no oppotunity to explain any unclear premises

of law. For the reasons stated, the Respondents respectfully request the Court to deny the Petition for a Writ of Certiorari.

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